

South Australia

# Help to Buy (Commonwealth Powers) Act 2025

An Act to adopt specified provisions of the *Help to Buy Act 2024* of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth, to refer legislative power of the State in the form of an amendment reference to the Parliament of the Commonwealth to make amendments to the *Help to Buy Act 2024* of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth, to make related amendments to various Acts, and for other purposes.

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Help to Buy (Commonwealth Powers) Act 2025*.

### 2—Commencement

This Act comes into operation on the day on which it is assented to by, or on behalf of, the Crown.

### 3—Interpretation

(1) In this Act—

**adoption** means the adoption under section 4(1)(a) or (b);

**amendment matters**—

- (a) means matters relating to the provision of Commonwealth financial assistance for the purpose of assisting individuals to buy a home, where the financial assistance is provided under a Help to Buy arrangement that—
  - (i) relates to residential property located in a State; and
  - (ii) is entered into while the State is a participating State; and
- (b) without limiting paragraph (a), means matters relating to—
  - (i) entering into Help to Buy arrangements that satisfy the conditions mentioned in paragraph (a)(i) and (ii); and
  - (ii) administering Help to Buy arrangements of that kind; and
  - (iii) monitoring compliance with Help to Buy arrangements of that kind; and
  - (iv) doing anything incidental or conducive to anything mentioned in subparagraph (i), (ii) or (iii);

**amendment reference** means the reference of matters under section 6(1);

**Commonwealth Help to Buy Act** means the *Help to Buy Act 2024* of the Commonwealth;

***express amendment*** of the Commonwealth Help to Buy Act means the direct amendment of the text of that Act (whether by insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the Commonwealth Help to Buy Act;

***Help to Buy arrangement*** has the same meaning as in the Commonwealth Help to Buy Act;

***Help to Buy program*** has the same meaning as in the Commonwealth Help to Buy Act;

***Housing Australia*** has the same meaning as in the *Housing Australia Act 2018* of the Commonwealth;

***primary version*** means the relevant version of the Commonwealth Help to Buy Act as originally enacted and as amended from time to time before the commencement of section 4, other than—

- (a) Divisions 2 and 3 of Part 2 of that Act; and
- (b) sections 24(1)(a)(ii), 25(3)(b) and (c) and 38 of that Act;

***residential property*** has the same meaning as in the Commonwealth Help to Buy Act;

***residual version*** means the relevant version of the Commonwealth Help to Buy Act as originally enacted and as amended from time to time before the commencement of section 4, other than—

- (a) Divisions 1 and 3 of Part 2 of that Act; and
- (b) sections 24(1)(a)(i), 25(3)(a) and (c) and 38 of that Act.

- (2) Unless the contrary intention appears, words defined in the Commonwealth Help to Buy Act and otherwise used in this Act have the same meaning in this Act as they have in the Commonwealth Help to Buy Act.

## **Part 2—Adoption of versions of the Commonwealth Help to Buy Act**

### **4—Adoption**

- (1) The following versions of the Commonwealth Help to Buy Act are adopted within the meaning of section 51(xxxvii) of the Constitution of the Commonwealth:
  - (a) the primary version;
  - (b) the residual version.
- (2) The operation of each paragraph of subsection (1) is not affected by the other paragraph.
- (3) The adoption has effect for a period—
  - (a) beginning when subsection (1) comes into operation; and
  - (b) ending at the end of the day fixed under section 7(1)(a) or (b).

## **5—Commonwealth laws not otherwise affected**

To avoid doubt, it is the intention of the Parliament of the State that the Commonwealth Help to Buy Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of section 4—

- (a) by a provision of a Commonwealth Act the operation of which is based on legislative power that the Parliament of the Commonwealth has apart from under the amendment reference; and
- (b) by a provision of an instrument made under the Commonwealth Help to Buy Act or under a provision referred to in paragraph (a).

## **6—Amendment reference**

- (1) The amendment matters are referred to the Parliament of the Commonwealth, but only to the extent of making laws with respect to those matters by making express amendments of the Commonwealth Help to Buy Act.
- (2) The reference in subsection (1) to making laws does not include making a law that would have the effect of—
  - (a) giving Housing Australia, after a State stops being a participating State, the function of entering into, or the power to enter into, shared equity arrangements that relate to residential property located in the State; or
  - (b) substantively removing or overriding—
    - (i) a provision of the Commonwealth Help to Buy Act that requires approval of the State before certain things are done; or
    - (ii) section 41, 41A or 42 of the Commonwealth Help to Buy Act.
- (3) The reference of a matter under subsection (1) has effect only—
  - (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth); and
  - (b) if and to the extent that the matter is included in the legislative power of the Parliament of the State.
- (4) The amendment reference has effect for a period—
  - (a) beginning when subsection (1) comes into operation; and
  - (b) ending at the end of the day fixed under section 7(1)(c).

## **7—Termination of adoption and amendment reference**

- (1) The Governor may, at any time, by proclamation, fix a day on which—
  - (a) the adoption of any or all of the primary version is to terminate; or
  - (b) the adoption of any or all of the residual version is to terminate; or
  - (c) the amendment reference is to terminate.
- (2) The Governor may, by proclamation, repeal a proclamation made under subsection (1), in which case the repealed proclamation is taken (for the purposes of section 4 or 6) never to have been made.

- (3) A repealing proclamation made under subsection (2) has effect only if made and published before the day fixed under subsection (1).
- (4) The repeal of a proclamation referred to in subsection (1) does not prevent the making and publication of a further proclamation under that subsection.

## **8—Effect of termination of amendment reference before termination of adoption of primary version or residual version**

- (1) If the amendment reference terminates before the adoption of the primary version is terminated, the termination of the amendment reference does not affect—
  - (a) laws that were made under that reference before that termination (whether or not they have come into operation before that termination); or
  - (b) the continued operation in the State of the Commonwealth Help to Buy Act as in operation immediately before that termination or as subsequently amended or affected by—
    - (i) laws referred to in paragraph (a) that come into operation after that termination; or
    - (ii) provisions referred to in section 5.
- (2) Accordingly, if the amendment reference terminates, it continues to have effect for the purposes of subsection (1) unless the adoption of the primary version is terminated.
- (3) If the amendment reference terminates before the adoption of the residual version is terminated, the termination of the amendment reference does not affect—
  - (a) laws that were made under that reference before that termination (whether or not they have come into operation before that termination); or
  - (b) the continued operation in the State of the Commonwealth Help to Buy Act as in operation immediately before that termination or as subsequently amended or affected by—
    - (i) laws referred to in paragraph (a) that come into operation after that termination; or
    - (ii) provisions referred to in section 5.
- (4) Accordingly, if the amendment reference terminates, it continues to have effect for the purposes of subsection (3) unless the adoption of the residual version is terminated.

## **Part 3—Miscellaneous**

### **9—Declaring certain matters to be excluded matters**

- (1) The following matters are declared to be excluded matters for the purposes of section 41A of the Commonwealth Help to Buy Act in relation to the Help to Buy program:
  - (a) any grant under the *First Home and Housing Construction Grants Act 2000*;
  - (b) any South Australian shared equity home buyer scheme (such as the HomeStart Shared Equity Option provided by HomeStart Finance);
  - (c) the administration and governance, including by the exercise of compliance functions, of the grants and schemes referred to in the preceding paragraphs;

- (d) any matter prescribed by the regulations.
- (2) The declaration of a matter to be an excluded matter under subsection (1) for the purposes of section 41A of the Commonwealth Help to Buy Act applies only to the extent to which the excluded matter would, but for this section, be inconsistent with the Commonwealth Help to Buy Act in relation to the Help to Buy program.
- (3) In this section—

**HomeStart Finance** means the statutory corporation of that name established under the *Urban Renewal Act 1995* by the *Housing and Urban Development (Administrative Arrangements) (HomeStart Finance) Regulations 1995* (and continued in existence under the *Urban Renewal (HomeStart Finance) Regulations 2020*).

### 10—State's objection to matters

- (1) For the purposes of section 46(1) of the Commonwealth Help to Buy Act, the Minister on behalf of the State, by notice given to the Commonwealth Minister during either the minimum consultation period or the extended consultation period, may object to a matter for the purposes of the Commonwealth Help to Buy Act.
- (2) After giving notice to the Commonwealth Minister under subsection (1), the Minister must ensure the notice is published in the Gazette as soon as practicable.
- (3) A notice under subsection (1) is to be taken as constituting the State's objection to a matter for the purposes of the Commonwealth Help to Buy Act.
- (4) The Minister on behalf of the State, by notice given to the Commonwealth Minister, may withdraw an objection to a matter under subsection (1).
- (5) After giving notice to the Commonwealth Minister under subsection (4), the Minister must ensure the notice is published in the Gazette as soon as practicable.
- (6) A notice under subsection (4) is to be taken as constituting the State's withdrawal of an objection to a matter for the purposes of the Commonwealth Help to Buy Act.
- (7) For the purposes of section 46(4) of the Commonwealth Help to Buy Act, the Minister on behalf of the State, by notice given to the Commonwealth Minister during the minimum consultation period, may require an additional 15 business days to consider a matter for the purposes of the Commonwealth Help to Buy Act.
- (8) After giving notice to the Commonwealth Minister under subsection (7)—
- (a) the Minister must ensure the notice is published in the Gazette as soon as practicable; and
  - (b) the extended consultation period applies for the purposes of giving notice to the Commonwealth Minister under subsection (1).
- (9) The validity of a notice given to the Commonwealth Minister under subsection (1), (4) or (7) is not affected by a failure to publish the notice in the Gazette.
- (10) In this section—

**Commonwealth Minister** means the Minister referred to in section 46 of the Commonwealth Help to Buy Act.

## 11—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
  - (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other specified person or body.

## Schedule 1—Related amendments

### Part 1—Amendment of *Emergency Services Funding Act 1998*

#### 1—Insertion of section 15A

After section 15 insert:

##### 15A—Land under Help to Buy arrangement

- (1) For the purposes of assessing the levy in respect of land purchased under a Help to Buy arrangement, an interest the Commonwealth or Housing Australia has in the land is to be disregarded.
- (2) In this section—

*Help to Buy arrangement* has the same meaning as in the *Help to Buy Act* of the Commonwealth;

*Housing Australia* has the same meaning as in the *Housing Australia Act 2018* of the Commonwealth.

### Part 2—Amendment of *First Home and Housing Construction Grants Act 2000*

#### 2—Insertion of section 6B

After section 6A insert:

##### 6B—Land under Help to Buy arrangement

- (1) For the purposes of assessing eligibility for any grant under this Act in respect of land purchased, or to be purchased, under a Help to Buy arrangement, an interest the Commonwealth or Housing Australia has, or will have, in the land is to be disregarded (and the Commonwealth or Housing Australia will be taken not to be an interested person for the purposes of section 15).

- (2) A person engaged in work related to the administration of this Act is authorised to disclose information obtained in the course of that work to the Commonwealth or Housing Australia to assist in determining whether a person is ineligible to be a participant in a Help to Buy arrangement.
- (3) Section 41 does not apply to information obtained under subsection (2).
- (4) In this section—

*Help to Buy arrangement* has the same meaning as in the *Help to Buy Act* of the Commonwealth;

*Housing Australia* has the same meaning as in the *Housing Australia Act 2018* of the Commonwealth.

### Part 3—Amendment of *Land Tax Act 1936*

#### 3—Insertion of section 9A

After section 9 insert:

##### 9A—Land under Help to Buy arrangement

- (1) For the purposes of assessing land tax on land purchased under a Help to Buy arrangement, an interest the Commonwealth or Housing Australia has in the land is to be disregarded.
- (2) In this section—

*Help to Buy arrangement* has the same meaning as in the *Help to Buy Act* of the Commonwealth;

*Housing Australia* has the same meaning as in the *Housing Australia Act 2018* of the Commonwealth.

### Part 4—Amendment of *Stamp Duties Act 1923*

#### 4—Insertion of section 60AB

After section 60A insert:

##### 60AB—Land under Help to Buy arrangement

- (1) For the purposes of assessing liability for duty on the conveyance or transfer of land purchased under a Help to Buy arrangement, an interest the Commonwealth or Housing Australia has in the land is to be disregarded.
- (2) An instrument that records or effects a change in an interest in land that occurs as a result of an increase in a person's share percentage in land purchased under a Help to Buy arrangement is exempt from duty.
- (3) In this section—

*Help to Buy arrangement* has the same meaning as in the *Help to Buy Act* of the Commonwealth;

*Housing Australia* has the same meaning as in the *Housing Australia Act 2018* of the Commonwealth.

## **Part 5—Amendment of *Taxation Administration Act 1996***

### **5—Insertion of section 78A**

After section 78 insert:

#### **78A—Disclosure of information in connection with Help to Buy arrangement**

- (1) A tax officer is authorised to disclose information obtained under or in relation to the administration of a taxation law to the Commonwealth or Housing Australia to assist in determining whether a person is ineligible to be a participant in a Help to Buy arrangement.
- (2) Section 80 does not apply to information obtained from a tax officer under this section.
- (3) In this section—

*Help to Buy arrangement* has the same meaning as in the *Help to Buy Act* of the Commonwealth;

*Housing Australia* has the same meaning as in the *Housing Australia Act 2018* of the Commonwealth.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2025	66	<i>Help to Buy (Commonwealth Powers) Act 2025</i>	4.12.2025	4.12.2025: s 2